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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re CURTIS T., et al., Persons
Coming Under the Juvenile Court Law.

B152819

(Super. Ct. No. CK44778)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JUAN T.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Marilyn
H. Mackel, Referee. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for
Defendant and Appellant.

Lloyd W. Pellman, County Counsel and Kim Nemoy, Deputy County
Counsel, for Plaintiff and Respondent.

Father, Juan T., appeals from the juvenile court's orders adjudicating his children dependents pursuant to section 300 of the Welfare and Institutions Code, and removing them from his custody. He claims the evidence is insufficient to support the jurisdictional findings and dispositional orders. He also claims his trial counsel was ineffective in failing to assert the lack of evidence to support the jurisdictional order. We find no prejudicial error and affirm the orders.

FACTUAL AND PROCEDURAL SUMMARY

Robbin P. and Juan T. are the parents of Curtis, born in 1995, and Kayla, born in 1997. The parents lived together intermittently but never married. In June 1998, mother was arrested after striking father with her shoe. She was convicted of misdemeanor infliction of corporal injury on a spouse, placed on probation, and ordered to complete a 52-week domestic violence program. The parents then separated and ended their relationship.

In October 2000, the Department of Children and Family Services (the Department) received a report alleging that Curtis and Kayla were being neglected by their mother, with whom they lived. The allegations were substantiated, and the Department provided mother with family preservation services pursuant to a voluntary family maintenance contract.

In January 2001, father took temporary custody of Curtis with mother's consent, until she could stabilize her housing. The Department investigated father's living conditions and found them appropriate. After securing father's agreement to enroll Curtis in school, the Department closed the family maintenance case on Curtis.

In February 2001, the Department received another referral, alleging that mother was neglecting Kayla and abusing drugs. When the Department

investigated, mother admitted she had been using amphetamines. Mother and Kayla were in the process of moving in with the children's maternal grandmother, Linda P., who was willing to help with the child's care. On February 15, mother signed a contract with the Department agreeing to attend a drug treatment program, randomly drug test, and participate in a family preservation program.

After signing the agreement with the Department, mother returned to her former residence and had a verbal altercation with her roommate. The police were called, and during a background check, they discovered mother had an outstanding warrant for violating probation on her 1998 domestic violence conviction. Mother was arrested, and Kayla was detained in her grandmother's home.

The following day, father brought Curtis to the grandmother's home for a weekend visit with mother and Kayla. Father was told that mother was in jail, and might be released that day. Father left Curtis at the grandmother's home without leaving a number where he could be reached. He then telephoned the Department and asked the social worker to verify that mother was in jail.

The Department investigated, and on February 22, 2001, filed a petition alleging that Curtis and Kayla were persons described by Welfare and Institutions Code¹ section 300, subdivisions (a) and (b), based on mother's drug use, a history of domestic violence between mother and father, and father's failure to enroll Curtis in school and maintain his school attendance.

Father appeared in propria persona at the February 22 detention hearing and denied the allegations. The children remain detained with the grandmother, and the court ordered family reunification services and monitored visitation in a neutral setting. On February 27, the court appointed Brenda Robinson as counsel for father.

On March 19, Curtis and Kayla were removed from their grandmother's home and placed in foster care. This followed two visits by the social worker during which the grandmother was uncooperative, the home was found to be untidy, the children's beds did not have clean sheets, the children did not listen to the grandmother, and two adults unknown to the Department seemed to be caring for the children.

At the pretrial resolution conference on March 21, Kathleen Brown substituted in as counsel for father. She noted that father was a non-offending parent and that there was no reason the children should not be placed with him. In the alternative, she asked that the paternal aunt be considered as a possible placement for the children. The court ordered the Department to assess the paternal relatives, and set the matter for a contested adjudication and disposition hearing on May 10.

At the May 10 hearing, Stephanie Cox substituted in as counsel for father. Ms. Cox asked for a continuance to prepare for trial. The court continued the matter, but stated there would be no further continuances. Ms. Cox assured the court she would be prepared to go to trial. The court then addressed father: "Father we are going to trial the next court date. You have the right to have counsel; however, be prepared to represent yourself. However, I would suggest that I am not going to relieve this present counsel and then relieve another counsel to substitute them in unless they are going to be prepared to go to trial for the next court date. You keep this counsel or you are prepared to go to trial on the next court date. If you substitute another counsel, they must be prepared to go to trial on that court date. There will be no further continuances."

¹ All statutory references are to this code unless otherwise indicated.

Mother waived her right to contest the amended petition, and the court conducted the contested adjudication and disposition hearing as to father on July 9, 2001. Father was represented by attorney Ronald Rios. Father was not present at the start of the hearing. Father entered the courtroom just after his attorney waived cross-examination and submitted the matter without presenting evidence. The court acknowledged that father had telephoned the court regarding his lateness, and then allowed father to address the court: "In addition, I am suppose [*sic*] to be here in pro per and I dismissed my attorney as to conflicts and I am not prepared. I don't have an attorney to represent me. I let my attorney know that he has been dismissed as my attorney and I wish to ask for a continuance."

The court responded: "Mr. T[.], this matter was set for trial today and tomorrow because it's old. You have been here several times with issues of an attorney and it has been continued for that reason and we indicated their [*sic*] can be no further continuance and your attorney has appeared this morning. You didn't dismiss your attorney. There is a procedure that has to be followed and he has made his appearance and we are proceeding forward with the trial and he has not indicated their [*sic*] has been any conflict and you are coming in and pretty much doing some of the things you have been doing in this court from day one on issues with the attorney or lack thereof."

Father then informed the court that he wrote down the date for the hearing as July 19, not July 9, and had subpoenaed witnesses for July 19. He also stated he had dismissed his attorney but the attorney failed to file the papers before the hearing. The court found that father had actual notice of the July 9 hearing date.

The court proceeded to sustain the petition as amended. The court declared Curtis and Kayla dependent children, and ordered that they be moved to the home of their paternal aunt at the end of the school year. Father was ordered to attend

domestic violence counseling, individual counseling, and parent education. Visits were to be monitored in a neutral setting. Father appeals from the jurisdiction and disposition orders. Mother is not a party to the appeal.

DISCUSSION

I

Father claims the sustained counts of the dependency petition naming him were insufficient to support a jurisdictional finding under section 300, subdivision (b). “[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent.” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.)

There is no challenge to the sufficiency of the sustained counts of the petition naming mother, which included count b-1, that mother “has a history of use of amphetamines, which renders mother periodically incapable of providing regular care for the children. Further, children’s mother’s abuse of drugs endangers the children and places the children’s physical and emotional health and safety at risk of harm and damage and creates a detrimental home environment.” This sustained count sufficiently pleads facts showing that Curtis and Kayla were at substantial risk of suffering serious physical harm or illness, within the meaning of section 300, subdivision (b). Where one basis for jurisdiction is supported by substantial evidence, we need not consider the sufficiency of the evidence to support other bases for jurisdiction. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876.)

II

Father claims his trial counsel was ineffective because he failed to argue that the counts of the petition naming father did not state facts sufficient to support

juvenile court jurisdiction. Section 317.5 provides, in subdivision (a): “All parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel.”

Attorney Ronald Rios represented father at the July 9, 2001 hearing. Mr. Rios presented no argument, called no witnesses, waived cross-examination, and submitted the matter on the Department’s social studies. After father arrived in court and stated he had discharged counsel, wished to proceed in propria persona, and had subpoenaed witnesses for a different date, counsel did not attempt to explain the circumstances or assist his client (or former client). The Department concedes counsel did not represent father in a manner expected of a reasonably competent attorney.

Reversal of an order based on ineffective assistance of counsel requires both deficient performance and a showing that if counsel had performed competently, the outcome of the hearing would have been more favorable to the client. (*Adoption of Michael D.* (1989) 209 Cal.App.3d 122, 136.) Father cannot make that showing, given our holding that the court had a sufficient basis for asserting dependency jurisdiction based on the sustained allegations as to mother. A challenge to the allegations as to father would not have defeated the jurisdictional finding.

We also observe that father substituted in new counsel at virtually every hearing following the initial appointment of counsel. On May 10, when father’s third attorney requested a continuance to prepare for trial, the court warned father directly that there would be no further continuances, even if father sought to substitute new counsel. Despite the warning, father again replaced counsel for the July 9 trial, and then told the court he had discharged that attorney, intended to proceed in propria persona, and required a continuance to prepare for trial.

Father's repeated replacement of counsel appears to be a delaying tactic rather than a legitimate concern regarding adequate representation.

III

Father next challenges the court's dispositional order removing the children from his custody. He argues there was insufficient evidence that he posed a "substantial danger to the physical health, safety, protection, or physical or emotional well-being" of his children (§ 361, subd. (c)(1)), or that either child was suffering severe emotional damage (§ 361, subd. (c)(3)). We find sufficient evidence to support the court's order.

Before the juvenile court can remove children from a parent's custody, it must find by clear and convincing evidence that there is a substantial risk of harm to their physical and emotional well-being if they remain with the parent, and that no reasonable means exist to protect the children absent removal. (§ 361, subd. (c).) In this case, mother was the custodial parent at the start of the dependency proceedings; father had agreed to care for Curtis temporarily. The sustained finding as to mother's drug abuse and inability to care for the children strongly supports the determination that the children faced a substantial risk of physical and emotional harm if they remained in her custody.

When a court orders removal of a child pursuant to section 361, if there is a noncustodial parent who requests custody, "the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).)

The court had before it the Department's report that Curtis requires special day class services to address his learning deficits. His academic skills were very low, his speech therapist reported that he was "low in speech and language" and

eligible to receive speech therapy twice a week. His grammar skills were those of a three-year old, and his individualized educational program was out of date.

One of the sustained allegations against father was that he had failed to enroll Curtis in school and maintain his school attendance. When father's home was assessed by the Department in January 2001, father agreed to maintain Curtis in school, but had not done so. Despite evidence of Curtis's special educational needs, father denied that Curtis had any learning deficit. He had called schools and been told that there was no legal requirement that Curtis be enrolled in school until first grade. Father's refusal to provide the educational services necessary for Curtis' development supports the court's determination that placement with father would be detrimental to Curtis' emotional well-being.

According to the Department's March 21 report, father told the social worker that he first suspected something was wrong in October and November 2000. The children were dirty, had no underwear or socks on, their nails were not cut, and he heard reports that they were unsupervised. He suspected that both mother and the maternal grandmother were using drugs. Despite this concern, he dropped Curtis off with the maternal grandmother on February 15, 2001. He was told at that time that mother had been taken to jail, yet he left both Curtis and Kayla with the grandmother, and did not provide a telephone number where he could be reached. He told the social worker that he was not financially stable enough to care for the children. This evidence provides further support for the court's conclusion that placing the children in father's custody would be detrimental to their safety and their physical and emotional well-being.

On this record, we find no abuse of discretion in the trial court's disposition order placing the children with their paternal aunt after the conclusion of the school term.

DISPOSITION

The orders are affirmed.

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EPSTEIN, Acting P.J.

We concur:

HASTINGS, J.

CURRY, J.